IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH, JAIPUR.

1. S. B. CIVIL MISC. APPEAL NO. 416/2005
Kailash Chandra V. Gopi Ram & Anr.

2. S.B. CIVIL MISC. APPEAL No.2157/2005
Smt. Chand Devi & Ors. V. Kuldeep Singh & Ors.

DATE OF JUDGMENT: 22nd March 2007

Hon'ble Mr. Justice R. S. Chauhan

Mr. Sandeep Mathur,
Mr. Anand Sharma, for the Appellants
Mr. V.P. Mathur, for the Respondents

(Per Court):

Since both these appeals raise the same legal issue, they are being decided by this common judgment. The legal issue involved in these appeals is whether the Motor Accident Claims Tribunal is justified in imposing a condition that the insurance company need not pay any compensation to the claimants until and unless the owner of the offending vehicle gives a security to the insurance company so that the insurance company may recover the compensation amount from the insured subsequently?

The facts are being taken from the first appeal namely, S.B. Civil Misc. Appeal No.416/2005. On 5.5.1997 Kailash Chand and Banwari Lal were traveling in a truck, bearing registration No.RJ-14-G-0054 from Kaladera to Bijolia. They were traveling in the said truck for the purpose of brining stone slabs for their own business. However, the driver was driving the said truck in a rash and negligent manner. Around 9.30 p.m. near the village Yardlipura, the said truck collided with another truck coming from the opposite direction, bearing registration No.RSL-1207. Consequently, the truck on which the appellant was traveling, its driver died on spot and the appellant suffered injuries. At the time accident the appellant was only 23 years old and was earning about Rs. 3000-4000 per month. Because of the said accident, the appellant suffered grievous injuries on his head as well as on his legs. He was hospitalized for twenty-five days. Because of the head injury his speech is no longer clear and he suffers from fainting spells. Because of the said injuries, he could not earn as much as he used to prior to the accident. Therefore, he along with Banwari Lal, they filed separate claim petitions before the Motor Accident Claims

Tribunal, Jaipur [Additional District & Sessions Judge (Fast Track), No.3, Jaipur District, Jaipur]. Vide Award dated 25.10.2004 the learned Tribunal granted a compensation award of Rs.2, 31, 678/- along with interest of 6% p.a. w. e. f. 30.9.1997 in favour of the appellant. However, the learned Tribunal imposed a condition on the payment of compensation award to the claimant, stating that the insurance company need not pay the compensation amount until and unless the owner of the offending vehicle appears before the court and submits a security in favour of the insurance company stating therein that he is willing to reimburse the insurance company of the compensation amount and in case he fails to do so, the insurance company will have a right to attach his movable and immovable property. A similar condition has also been imposed by the Additional District & Sessions Judge (Fast Track) No.6, Jaipur City, Jaipur in the second appeal that is before this court. Since the appellants are aggrieved by this particular condition imposed by learned Tribunal, they have filed the appeals before this Court.

Mr. Sandeep Mathur and Mr. Anand Sharma, the learned counsel for the appellants, have vehemently argued that the imposition of said condition is against Sec.149 of the Motor Vehicles Act, 1988 (henceforth to be referred to as the ‘Act’, for short). In order to support their contention they have relied on a case of National Insurance Company Ltd. V. Baljeet Kaur (2004 ACJ 428).

On the other hand, Mr. V.P. Mathur, the learned counsel for the respondents, has contended that the Apex Court has imposed such a condition in catena of cases. Therefore, the learned Tribunal was justified in imposing the said condition. After all, such a condition is imposed in order to ensure that the insurance company recovers its money from the owner of the offending vehicle. In order to buttress his case, the learned counsel has relied upon the cases of Oriental Insurance Company Ltd. V. Nanjappan (2004 ACJ 721), Pramod Kumar V. Mustari Begum (2004 ACJ 1903) and the case of National Insurance Company Ltd. V. Challa Bharathamma (2004 ACJ 2094).

We have heard learned counsel for the parties, have perused the impugned award and have examined the case law cited at the Bar.

In order to resolve this controversy, it is imperative that the relevant provisions of the Act be analyzed. Section 147(1)(B) of the Act, 1988 duly amended by Amendment Act, 1994 speaks of the liability to be incurred by owner of offending vehicle either in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of vehicle in a public place. S.147 (1)(b)(i) reads as follows:

> Section 147. Requirements of policies and limits of liability :-
>
> (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -
>
> (a) ……..
>
> (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) –
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of

the vehicle in a public place;

In terms of S.147 of the Act, liability of the insurer towards third party is a statutory liability as provided under Chapter XI of the Act and provides for compulsory insurance against third party.

On the other hand, Section 149 of the Act casts a duty upon the insurer to satisfy judgments and awards against persons insured in respect of third party risks and exclusion has been provided under sub-section (4) only to the extent as provided under sub-clause (b) of sub-section (2) of S.149 of the Act, which provides as under :-

> (c) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

Sub-section (4) of S.149 of the Act, 1988 reads :-

> (4) Where a certificate of insurance has been issued under sub-section (3) of section 147 of the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the person insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy

> under clause (b) of sub-section (1) of section 147, be of no effect :
>
> Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which I covered by virtue only of this sub-section shall be recoverable by the insurer from that person.

Only by virtue of proviso to sub-section (4) of S.149 of the Act, the insurer has been given right of recovery of any sum paid by it in or towards discharge of any liability of any person covered by insurance policy from that person.

A conjoint reading of Section 147 & 149 of the Act, 1988 certainly establishes that the Act is a beneficial piece of legislation. Its ultimate object is that even if there is any breach of policy of insurance by owner of offending vehicle, the insurer is liable for third party risk, which is ordinarily cast upon the insurer to fulfill. However, the Insurance Company is liable to pay the compensation amount, subject to its right of recovery enjoined upon as provided under Section 149(4) of the Act.

In this context, the condition incorporated by learned

Tribunal under impugned Award to release amount of compensation in favour of claimants only after owner of offending vehicle furnishes security of the Award tantamount to virtually the denial of the compensation to the claimants, to which they are entitled for under law.

In National Insurance Co. Ltd V. Baljit Kaur (supra) the Apex Court was considering situation like the one in the present appeals. After taking considering Section 147 of the Act, the Apex Court observed as under :-

> We, therefore, are of the opinion that the interest of justice will be sub-served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer.
>
> We have issued the afore mentioned directions having regard to the scope and purport of section 168 of the Motor Vehicles Act, 1988 in terms whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident

inasmuch as can be resolved by the Tribunal in such a proceeding.

The case of Oriental Insurance Co. Ltd Vs. Nanjappan (supra) was filed by the Insurance Company. In that case, the owner of the offending vehicle, the insured, did not appeared either before the High Court, or before the Apex Court despite the service of notice upon him. Therefore, in such a circumstance, just to ensure payment of Awarded compensation to be indemnified by insurer, the Apex Court stipulated a condition for furnishing security.

As regards the decision in Pramod Kumar Vs. Mustari Begum (supra), it was a case where the owner of offending vehicle preferred appeals and condition was stipulated by Apex Court with a view to ensure amount of compensation paid at once by insurer to claimants under impugned Award. But, in instant cases, the claimants have come forward for release of compensation which either of parties has not disputed and in such circumstances, even Apex Court in National Insurance Co. Ltd Vs. Baljit Kaur (supra) has directed the insurer to satisfy the Award amount in favour of claimants and a liberty was

granted to the insurer to initiate proceedings for recovery thereof in accordance with law. In order to facilitate such recovery, the Apex Court had stipulated that the Insurance Company need not file a separate suit for recovery of the amount from the insured.

Therefore, in the opinion of this court, the condition incorporated by Tribunal under impugned Award to make payment of compensation to claimants subject to furnishing security by owner of offending vehicle is contrary to provisions of S.149 (4) of the Act, 1988.

In the result these appeals are allowed and the condition incorporated in the impugned Awards with regard to release of the compensation amount by the insurer to the claimants, only on furnishing security by the owner of the offending vehicle for the entire compensation amount is quashed and set aside. The compensation amount shall be paid to the appellants within a period of two months from the date of receipt of the certified copy of this judgment. There shall be no order as to cost.

R. S. Chauhan, J.